The
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For Conscience' Sake

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Brooks Asks Minimum Sentence For Draft Violators

A House bill, HR 6872, introduced by Overton Brooks of Louisiana on January 6, 1954, would provide a mandatory minimum sentence for draft violation of two years. The revised language of the pertinent section of the Selective Service law would be:

"Any person who evades or refuses registration or service in the Armed Forces under this title, or who conspires to evade or refuse registration or service in the Armed Forces under this title, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not less than two nor more than five years, or by such imprisonment and a fine of not more than $10,000."

The bill was referred to the House Armed Services Committee, and no action has been taken as yet.

"Time Tax"

The report of the National Security Training Commission, entitled "20th Century Minutemen," describes the civilian work of conscientious objectors as a "time tax." Following is the paragraph from their report on COs:

"Respect for the private conscience is a characteristic tenet of the democratic way of life. It is one of the roots of almost all of the civil rights which set democracy apart from totalitarianism. Accordingly, we recommend that conscientious objectors be treated under National Security Training as provided under present law. Those

(*Continued on page 2*)

Recent Court Cases Attack Secrecy of FBI Reports; Frequent Acquittals May Result in New Investigative Procedures

In the cases of *U. S.* v. *Nugent* and *U. S.* v. *Packer*, June 8, 1953, the Supreme Court purported to dispel serious questions about the conscientious objector appeal procedure by placing its stamp of approval on the use of secret FBI reports. More recent cases have, however, continued to attack the secrecy of FBI reports and have, in fact, done so as a consequence of the Supreme Court decision itself.

Congress Asked Appropriate Inquiry

Selective Service law provides that an appeal for classification as a conscientious objector shall be referred to the Department of Justice for "appropriate inquiry," "hearing with respect to the character and good faith of the objections of the person concerned," and recommendation to the appeal board. Under the present Act, as well as under the Selective Service Act of 1940, the Justice Department has regularly used the FBI to make the "appropriate inquiry" into the appealing registrant's background, reputation and character. The so-called "raw" FBI report, including names and addresses of the various informants, is used by the Justice Department in making its report and recommendation, but is not revealed to the registrant or the appeal board—the FBI report is considered a secret document and informants assume that their identity will not be revealed.

Due Process vs. Secret Reports

July 28, 1952, Judge J. Joseph Smith, District of Connecticut, held in the cases of Oller, Donovan, and Pekarski that refusal to make available the FBI reports was cause for complaint on the part of the appeal board, and the registrant if his case had been prejudiced by the recommendatory report based on concealed facts. Oller and Donovan were acquitted since the Justice Department reported unfavorably while concealing the basis of its opinion—they were denied due process of law. Pekarski was convicted because the Justice Department recommended favorably and there was no prejudice from a secret source!

Congressional Intent Implies Open Report

Several months later, October 7, 1952, Judge C. C. Hincks, in the same district, held similarly and acquitted Andrew Geyer. He stated his concurrence with Judge Smith, but emphasized in addition the statutory construction.

"There are . . . provisions in the Act from which I think one must imply a Congressional intent that the board should have access to the investigative report."

Second Circuit Demands FBI Reports

The reasoning of Judge Hincks was accepted and followed closely by the Second Circuit Court of Appeals in the cases of Harry Gray Nugent, November 10, 1952, and Lester Packer, December 31, 1952. Both were acquitted. (District Courts in the Second Circuit were now bound by the appellate decision and another registrant, Nicholas Christiano, was acquitted on November 17 before prosecutions were halted.)

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RECENT COURT CASES

(*From page one*)

Sixth and Ninth Circuits Oppose Disclosure

The Second Circuit decision was in direct conflict with the Court of Appeals in the Sixth Circuit, and the West Coast (Ninth Circuit) later entered the controversy in opposition to disclosure of FBI reports.

The Sixth Circuit, in the case of *Imboden* v. *U. S.*, February 6, 1952, had clearly stated its contention that the use of secret FBI reports was not a denial of due process.

> "The procedure under the draft law and the resulting classification of the registrant is not a judicial trial with the right to be represented by counsel and to call, examine and cross examine witnesses."

The Ninth Circuit, in the Theron Leroy Elder case, just as unequivocally stated its opinion that the statute itself does not require disclosure of the FBI reports:

> ". . . If the agency inquiry . . . is to be productive of worthwhile results, it seems essential that frankness on the part of persons interviewed be encouraged by assurance that their identity will not be divulged; and in the absence of clear intimation in the statute to the contrary the court will not assume that Congress intended these investigative reports to be made public."

Supreme Court Attempts Resolve Conflict

The Supreme Court was called on to resolve the conflict. Certiorari was granted when the government itself asked for appeal in the cases of Nugent and Packer. June 18, 1953, five Supreme Court Justices had concluded that the Second Circuit Court of Appeals had erred. Chief Justice Vinson announced the decision. The statutory scheme for review, the Court held, does not entitle the conscientious objector to guarantee that the FBI report must be produced for inspection. Judge Vinson said:

> "We think the Department of Justice satisfies its duties . . . when it accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer; when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a *fair résumé* of any adverse evidence in the investigator's report." (Emphasis added.)

Justices Frankfurter, Douglas, and Black dissented. Justice Jackson took no part.

No Fair Resume Without Basis

Judge Hincks was not yet satisfied with the assumption that FBI reports were now immune. The Supreme Court has stated that the registrant is entitled to a fair résumé of the FBI report. Judge Hincks objected to "presuming" "that the hearing officer had made a fair résumé of the FBI reports." "It is my opinion," he stated, "that I cannot conscientiously determine that the résumé was fair without an opportunity to inspect the investigative report of which it is claimed to be a résumé." August 20, 1953, in the case of Robert Lee Evans, he gave the government choice of disclosing the FBI report* or abandoning prosecution. The prosecution was abandoned. (*Names and addresses of informants interviewed by the FBI agents are privileged, the Judge agreed, and should not be disclosed.)

Courts Continue Demand FBI Reports

A chain of similar decisions have followed in the wake of the Evans case.

November 6, 1953, Judge Sterling Hutcheson, Eastern District of Virginia, acquitted Harold N. Stull when the government refused to produce FBI reports. The Judge quoted heavily from the Evans case and stated full concurrence.

December 2, 1953, Judge W. D. Murray sustained a motion to subpoena FBI reports, and dismissed Robert Stanley Parker when the government refused to produce the reports. This was repeated on December 4 in the case of Thomas Roger Simanton.

December 16, 1953, Judge E. J. Dinock, Southern District of New York, heard the cases of three registrants who had been given no résumé of adverse evidence prior to the Justice Department hearing. Judge Dinock held that Stassevic and Vincelli had waived their right to a résumé of adverse evidence by failure to make appropriate request, although apprised of this privilege. Prytyskacz had requested a résumé, and the FBI reports were essential, Judge Dinock stated, to determine whether they contained concealed adverse evidence.

Judge Leo F. Rayfiel, in the January 4 case of Saul Wider, flatly opposed subpoena of FBI reports but granted subpoena for minutes of the hearing held after FBI investigation.

Proper Use of FBI Reports Unresolved

Very obviously, the proper use of secret FBI reports in conscientious objector cases has not been finally determined. Other district and appeal courts will be ruling on the question. Perhaps eventually the question will again be lodged with the Supreme Court. With the death of Chief Justice Vinson, only four of the Justices on the majority side of the Nugent-Packer case remain. Having held that a fair résumé is necessary, it seems unconscionable that judicial minds would be satisfied with presuming a résumé of secret evidence to be fair, especially when it eventually contributes to an individual's imprisonment. It also seems unlikely that the FBI will ever consent to release of its investigative reports. Perhaps a nonsecret inquiry without the FBI would solve the problem. Perhaps the next year or several will see an even more basic change in CO appeal procedures.

"TIME TAX"

(*From page one*)

> opposed to combatant training should be inducted and assigned to noncombatant training as prescribed by the President, and those opposed to noncombatant training should be assigned by their local board for a period of 6 months to civilian work contributing to the national health, safety, or interest. This amounts to a 'time tax' of 6 months in activities compatible with the conscience of the objector."

HART JOINS ARMY

The case of Robert J. Hart, which was reported in the December 1953 REPORTER, was concluded when he entered the army. Hart was given the choice of entering the army or being sentenced to prison. The sentence was unusual in that he would have to spend 48 hours in prison every week for five years and pay a fine of $4 for every 48 hours in prison.

* * *

INADEQUATE SUMMARY ACQUITS MAN

Julien Regouby, a registrant from Iowa, was just acquitted of refusing inductiton because an adequate summary of his personal appearance was not in his file. (The personal appearance occurred when the SS Regulations stated that the draft board must write the summary. Now it is the responsibility of the registrant to write the summary.)

"FAIR RESUME" SENT DENTIST

The "fair résumé" of the FBI Investigative Report is sometimes a brief, cryptic statement of unknown importance to the registrant. The following is a complete report sent to a dentist who had appealed for a I-O classification. It is very short, maybe because no derogatory information was uncovered.

"Former college and dental school instructors attest to registrant's good character and reputation. Former employments were verified. Co-workers and professional associates regarded registrant as a sincere and conscientious individual. Neighbors and associates believe he is honest and deeply religious. These interviewees are aware of the fact that he is planning to leave his dental practice in order to become a dental missionary in Puerto Rico. References and neighbors state that his character and personal habits are beyond reproach. These informants know that he is an active and devout member of the Congregational Church. He has also participated in community and P.T.A. projects. All persons, who were interviewed, have no reason to question the sincerity of registrant's professed conscientious objector convictions and they describe him as a humanitarian and an individual who has always been interested in the welfare of others. Credit and criminal records are negative."

* * *

METHODIST KENT IMPRISONED

After three years of effort in attempting to get a I-O classification, Robert T. Kent of Wilmington, California, is now in prison at Tucson, Arizona. A three-year sentence, for his refusal to submit to induction, began December 9, 1953.

Robert refused induction on November 20, 1952, and was arrested the following April. Judge Harrison of Los Angeles imposed the three-year sentence in June. This was upheld by the Circuit Court of Appeals on October 9, 1953.

After Robert's trial, Major Kealy of the Los Angeles office of the Selective Service System, told Rev. Kent "that if his son had been a Quaker or a Brethren it (the trial) would have been different, but since the Methodist Church (to which Bob and his father belong) did not teach that its members should hold the CO position, Bob could not have gotten his ideas from the church and hence was not a sincere religious objector."

* * *

I-A-O RELEASED FROM MARINES

A writ of habeas corpus, releasing a I-A-O from the Marine Corps on December 30, 1953, was issued by Judge Thomas J. Clary of Philadelphia. The writ was issued on the basis that the Marines have no unit which is unarmed at all times, or any medical unit, and that the man, William H. Weidman, had exhausted all possible administrative remedies for relief. Thus the Marine Corps had no further jurisdiction over Weidman.

In 1951, this I-A-O registrant was drafted, and sent to the Marines. After taking a non-combatant basic training, Weidman realized that there were no noncombatant units available, and he therefore applied for a discharge or transfer to an army or navy medical corps. Meanwhile, during the processing of the request, Weidman was assigned to such work as mail clerk, bookkeeping and bartending.

After he exhausted his administrative procedures, Weidman went AWOL for 14 months before being arrested. At present he is still under $2,000 bond, in case of a government appeal.

* * *

ACQUITTALS PROBABLY SHIFT BURDEN OF PROOF

A court decision, with possible far-reaching effects, was handed down by the Sixth Circuit Court of Appeals in Ohio on December 22, 1953. Two registrants, with very similar cases, had appealed together from the district court which sentenced them to 5 years in prison. These men, who are Jehovah Witnesses, were acquitted by the Appellate Court. Two reasons were given for the acquittal.

The first, and most important cause for acquittal, was that the Presidential Appeal Board classified the two men in I-A after they had received I-O's from their local and state appeal boards, and that there was a "complete lack of evidence to contradict the findings of the two lower boards." The court continues, "the ruling of the National Selective Service Appeal Board classifying each of the appellants in I-A was arbitrary and capricious and without basis in fact."

"The National Selective Service Appeal Board, without stating any reasons or making any findings of fact, placed the appellants in I-A," the court stated. "Though we may not weigh the evidence before the Administrative Board, where there is no *substantial* evidence to support a classification made by such Board, the order is void."

The second reason for acquittal was based on the fact that the appellants were denied a IV-D, or ministerial, classification and no reason or fact given for the denial. Actually, the men were full-time ministers and had submitted proof of ordination before the Presidential Appeal was taken. This action by the court was based upon the recent *Dickinson v. United States of America* Supreme Court Opinion (January, 1954, REPORTER).

Another acquittal, based on very similar grounds, occurred in the Court of District Judge Harry C. Westover, of Los Angeles. In the opinion handed down on November 30, 1953, Mike William Rogoff was acquitted because the Presidential Appeal Board gave him a I-A after the Justice Department recommended a I-A-O and the California State Appeal Board gave him a I-A-O. Furthermore, Judge Westover states, "Although the Presidential Appeal Board may have had reason for not following the recommendation of the hearing officer and the Department of Justice, we are of the opinion that if such recommendations are not followed, there should be something in the file to indicate why they were ignored."

* * *

KAUFMAN GIVEN CIVILIAN WORK AFTER PRISON

The first known assignment of a conscientious objector to the work program, after serving a prison sentence for his beliefs, was recently completed. Reuben J. Kaufman, an Amishman of Illinois, was the registrant.

In 1952 Reuben refused to submit for induction after being denied a I-O classification by the local and state appeal boards. He was sentenced to one year and one day of prison. After about four months at the Springfield, Missouri, prison, Reuben was paroled.

Shortly after the end of his parole, the local board classified him I-O, "on the grounds that he had refused induction for conscience' sake, he must be sincere because he was willing to serve his penalty, that he had his punishment for not living up to the 'qualifications' of a I-O, and that he was willing to serve 24 months in the civilian work program."

Fourteen More Former CPS Men Released

The following men have been released from I-W service because of former CPS service. This list does not include those men listed in the September, 1953, REPORTER. Ezra Paul Beachy, Vernon P. Becker, James O. Bond, David Samuel Brenneman, Roland P. Brown, Eber Glenn Diener, John J. Fisher, Jr., Delbert Dale Goering, Alfred D. Hollenberg, Mervin Stanley Krieder, Melvin L. Miller, Fred Wade Nightingale, Robert M. Trimmer, and Marlin Vogt.

Three of these men, Bond, Brown, and Hollenberg, are doctors.

HERE AND THERE

Late filing of material will apparently cause problems for a portion of 2000 to 3000 persons now liable to I-A. These figures represent men with less than six months active service in the armed forces since June 24, 1948, who were classified I-C until recently. Many of them would be eligible for dependency and other types of deferment, but did not file data regarding their situation before certain deadlines.

This situation brings to mind the cases of conscientious objectors who neglected to file information regarding their current status, and therefore faced acute problems later on.

* * *

Francis Heisler, a prominent Chicago attorney, has written "The Law Versus The Conscientious Objector" which has been reprinted for private circulation from the University of Chicago Law Review. Copies can probably be secured by contacting Mr. Heisler at 7 South Dearborn Street, Chicago 3, Illinois.

* * *

Recently a pacifist speaker *polled some non-pacifist audiences* after he had explained the pacifist position. Forty-four said that while they did not necessarily take the pacifist posititon themselves, they believed there should be war objectors; 41 said that, while not believing there should be war objectors, they had no aversion to them and wouldn't mind having one for a close friend; 11 said war objectors should be imprisoned, while 2 of them said they should be shot.

* * *

Three Molokans, members of a religious group long affiliated with the NSBRO Consultative Council, were recently tried in California courts. Mike Rogoff was acquitted, while P. A. Nazeroff and William Chernekoff were given three years each.

JUSTICE DEPARTMENT ERROR CORRECTED

The case of the registrant who received a I-A from the state appeal board and the Presidential Appeal Board because of an error in the Justice Department recommendation (January, 1954, REPORTER) has now been corrected. The local board placed the conscientious objector in I-O after notification of the error by the state director.

SCHUMAN ACQUITTED; RECENT CHURCH MEMBERSHIP NO REASON TO DENY CO CLAIM

The Circuit Court of Appeals of the Ninth Circuit (for nine western states) has handed down a very important opinion based on the recent *Dickinson* v. *United States* Supreme Court decision. The opinion concerned the rejection of a I-O or IV-D classification to a Jehovah's Witness registrant. The registrant had supplied appropriate and sufficient evidence for a I-O and IV-D. He was given a I-A with "no basis in fact" included in his Selective Service file. Thus, he received an acquittal from the Appellate Court.

The primary question answered by this opinion "is whether there was a basis in fact for the classification of the registrant in I-A rather than IV-D, I-O, or I-A-O. . . . All of the evidence bearing upon the registrant's claim for exemption as a minister, that is contained in his Selective Service file, was placed therein by the registrant." Thus there was no evidence in the file which tended to disprove the ministerial claim. Furthermore, from the information the registrant submitted, there was no information that would indicate the registrant was not a full-time minister.

In regard to the registrant's claim as a conscientious objector, none of his claims as a CO, made before the local board, were contradicted. Also, one of the local board members stated to the registrant that "Your veracity of your faith is unquestionable." To dispute the registrant's claim as a CO, "There are only suspicions raised by the fact that the registrant did not begin his religious studies until after he had registered for the draft and by the fact that he had not sought exemption until after the Korean War broke out. As the Supreme Court has stated in the *Dickinson* v. *United States* decision . . . 'dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice'."

Since there was no affirmative evidence denying the ministerial or the conscientious objector claim, the registrant, David D. Schuman, was acquitted.

"MENNONITE" COs COME FROM 17 RELIGIOUS BODIES

A recent tabulation of the religious affiliation of 2,411 Mennonites in the current civilian work program indicates the following breakdown:

Old Mennonite	1,089
General Conference	383
Old Order Amish	366
Conservative Amish	125
Church of God in Christ	109
Brethren in Christ	90
Mennonite Brethren	76
Beachy Amish	36
Old Order Mennonite	32
From Independent Mennonite Congregations	21
Krimmer Mennonite Brethren	18
Evangelical Mennonite Brethren	17
Evangelical Mennonite	12
Hutterites	6
United Missionary Church	6
United Zion	6
Missionary Church Association	1
Conference Affiliations Unknown	18
TOTAL	2,411

JUDGE COMMENTS ON TAFFS' THEOCRATIC BELIEFS

December 7, 1953, the Eighth Circuit Court of Appeals acquitted Jehovah's Witness Siegfried Ranulf Taffs and commented significantly on belief in self-defense and belief in theocratic warfare as they relate to eligibility for conscientious objector classification.

Taffs had been held ineligible for conscientious objector classification because he believed in the use of force in defense of his life, property, or fellow Jehovah's Witness and believed in and approved of theocratic wars (under the immediate direction of God).

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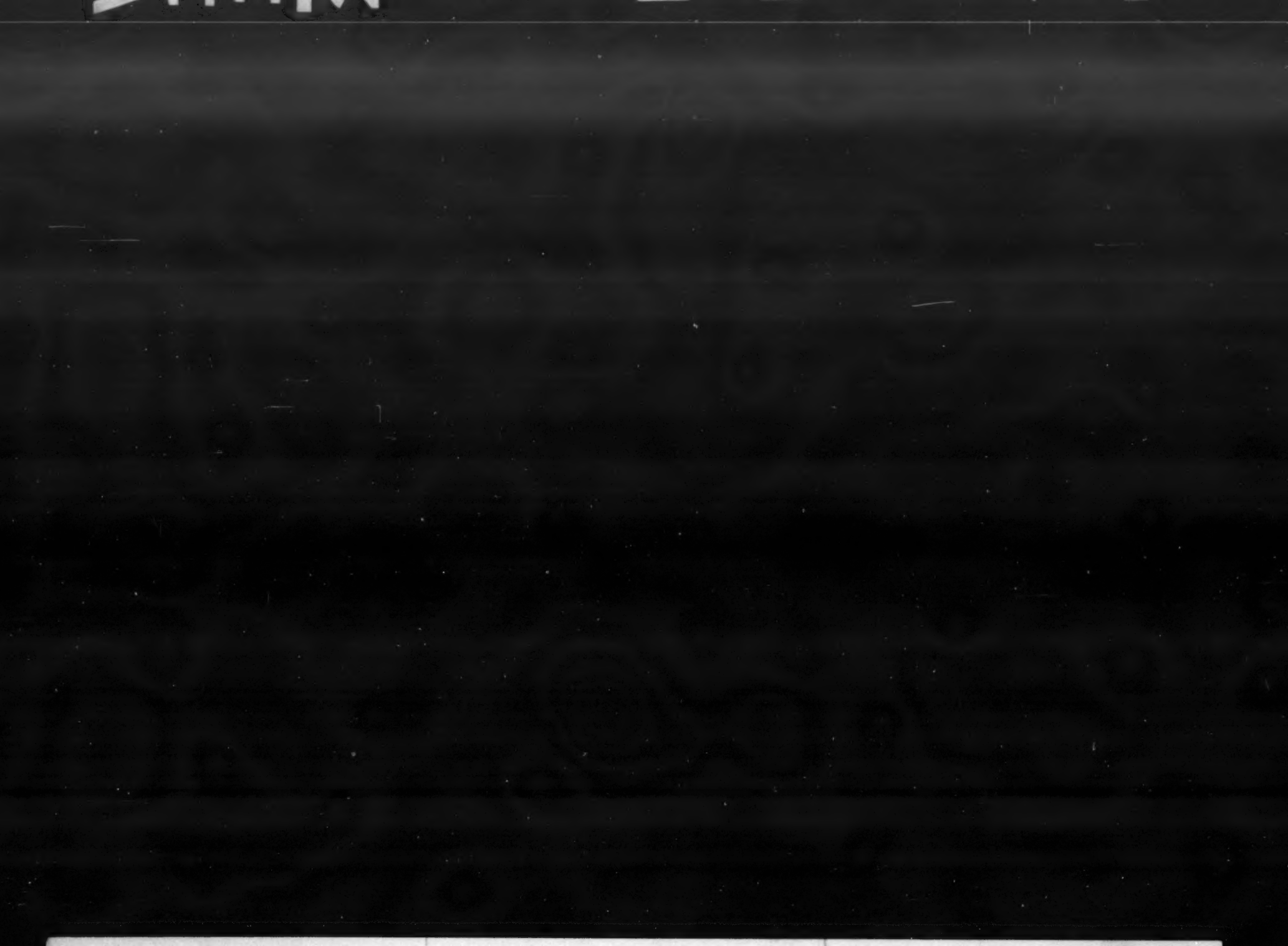
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